Supreme Court, U.S.
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No. 94-1022

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

McDERMOTT INTERNATIONAL, INC.,
Petitioner,
v.
ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondents' arguments demonstrate why this Court should grant the Petition for a Writ of Certiorari. Rather than addressing the proper choice-of-law factors set forth by this Court, Respondents and the Louisiana Supreme Court have embarked on a radically different course. Following that course has caused an irreconcilable conflict between the Louisiana Supreme Court and the federal courts.

Respondents contend that there is no reason why the Louisiana Supreme Court should apply the uniform interpretation of the federal appellate courts on the choice-of-law issue. Thus, Respondents ask this Court to sanction a choice-of-law analysis which will cause forum shopping and conflicting results. In essence, Respondents' brief *supports* the granting of a writ of certiorari because a decision which upholds Respondents' position would reject the uniform interpretation of the precedents of this Court. If the fourteen points set forth by Respondent are meant to replace the factors set forth by this Court, then this Court should grant the writ of certiorari to change the law. In contrast,

Petitioner requests the Court grant a writ of certiorari to correct the change of course by the Louisiana Supreme Court and to re-establish a uniform choice-of-law rule when Americans work overseas for foreign companies in localized foreign operations.

1. Conflict With The Decisions Of This Court

Just as the Louisiana Supreme Court declined to evaluate and weigh each of the *Lauritzen-Rhoditis* factors in accordance with the analysis set forth by this Court in *Lauritzen v. Larsen*, 345 U.S. 571 (1953) and *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970), Respondents set out their own fourteen points, which are irrelevant to the choice-of-law analysis applied by this Court and to the analysis which has been uniformly applied by the lower federal courts. This departure from the factors enunciated by this Court has consequences far more important than the conflict with the precedents of this Court. The decision of the Louisiana Supreme Court rejects any uniformity in the federal maritime law and casts aside the fundamental principle of comity which underlies international law.

The thrust of Respondents' argument is to characterize this case as a disagreement over a factual conclusion. However, the only factual dispute arises because of Respondents' fourteen points, not because of the factors set out by this Court in *Lauritzen-Rhoditis*.[1] Respondents'

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[1] Failing to satisfy the *Lauritzen-Rhoditis* factors, Respondents allege numerous points which have no relevance to the *Lauritzen-Rhoditis* factors in an attempt to circumvent the *Lauritzen-Rhoditis* test. Not only are many of the allegations not found within the record, some of them are simply false. Despite their immateriality, Petitioner feels compelled to point out some

of the major factual errors:

1. Petitioner's corporate restructuring was done for bona fide business reasons many years before the Louisiana Supreme Court decided Powell v. McDermott International, Inc., 588 So.2d 84 (La. 1991).

2. Malmac is neither managed nor controlled by McDermott International, Inc., which only owns 30% of Malmac's stock.

3. The DB-52 was performing Malmac's work. Malmac was a party to a contract dated October 5, 1990 with Esso Production Malaysia, Inc. covering 1991 offshore installations.

4. The DB-52 was located on the Malaysian Continental Shelf at the time of Mr. Beasley's accident and was subject to the Malaysian Continental Shelf Act.

5. Prior to his accident, Beasley worked in Southeast Asia pursuant to an employment contract which terminated at the completion of the job in April 1990. Beasley returned to the United States and could have sought any employment he desired. Beasley voluntarily returned to Southeast Asia and signed a new employment contract on November 20, 1990 which was assigned to Malmac. Prior to his accident in June 1991, Beasley travelled to the United States on at least two occasions. Obviously he was not employed in an adhesion situation and had ample opportunity to seek employment elsewhere if he wished to do so.

6. Both the February 1990 and November 1990 contracts signed by Beasley were assigned to

brief exemplifies the morass that will occur in every choice-of-law case if Respondents' fourteen points are allowed to supplant the *Lauritzen-Rhoditis* factors enunciated by this Court. In contrast to Respondents' fourteen points, the *Lauritzen-Rhoditis* factors unequivocally point to the application of Malaysian law in this case. The Louisiana Court of Appeal below properly weighed the factors set out by this Court and found that the overwhelming weight of the *Lauritzen-Rhoditis* factors favored application of Malaysian law. Contrary to Respondents' assertion, it has not been and will not be necessary to grant a writ of certiorari in every international choice-of-law case. The reason Petitioner has sought a writ in this case is because the Louisiana Supreme Court has deviated from the uniform interpretation given to *Lauritzen-Rhoditis* by the federal circuit courts. If the Court grants a writ of certiorari in this case, the Court can avoid the sea of confusion that the decision of the Louisiana Supreme Court will surely engender.

It is not merely ironic that Respondents' fourteen points are not the factors set out by this Court in *Lauritzen-Rhoditis*. In *Lauritzen*, this Court explained the reason for having international choice-of-law rules: "reconciling our own with foreign interests and . . . accommodating the reach of our own laws to those of other maritime nations." *Lauritzen*, 345 U.S. at 577. The points raised by Respondents have absolutely nothing to do with the needs of international commerce, mutual forbearance in international relations and respect for sovereign nations. *Lauritzen*, 345 U.S. at 582. Respondents' brief asserts the same parochial

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Malmac when Beasley worked on the Malaysian Continental Shelf.

attitude as that taken by the Louisiana Supreme Court.[2] That is, the Louisiana Supreme Court can apply whatever law it desires for localized operations in a foreign country, regardless of international implications.

Even if the Louisiana Supreme Court is permitted to weigh the choice-of-law factors in its own fashion so as to reach a conclusion diametrically opposed to those of all of the federal circuit courts, there still has to be some limit. The Louisiana Supreme Court simply cannot apply American law to every localized operation conducted under foreign law by foreign citizens in foreign countries. Therefore, Petitioner respectfully prays that this Court grant the writ of certiorari.

2. Conflict With The Federal Decisions

Respondents' assertion that there is no conflict between the opinion of the Louisiana Supreme Court and the

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Respondents' remarks about the "black hole" of Malaysian law and caning are not only demeaning, they are inaccurate. However, they are indicative of the protectionist attitude espoused by Respondents that American law must follow Americans wherever they go around the world. In truth, Malaysia has a well-developed and mature legal system regulating personal injury claims. The adequacy of Malaysian law was established without opposition by the lengthy affidavit of W.S.W. Davidson, Esq., an Advocate and Solicitor who has been practicing law in Malaysia since 1964 and who has been involved in litigation in the Malaysian courts, including the Supreme Court of Malaysia, as well as in the Privy Council in London on behalf of Malaysian clients. Respondents also supplied the Malaysian Continental Shelf Act and the Malaysian Civil Law Act. Respondents' contention that Petitioner has failed to establish the adequacy of Malaysian law is simply not correct.

uniform precedents of the federal circuit courts is contradicted by the cases they cite. The direct conflict between the Louisiana Supreme Court and the decisions of the federal circuit courts in applying the *Lauritzen-Rhoditis* factors is demonstrated by a comparison of *Beasley* with *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159 (5th Cir.), *cert. denied*, 484 U.S. 977 (1987) and *Fogleman v. Aramco (Arabian American Oil Co.)*, 920 F.2d 278 (5th Cir. 1991):

	Beasley	***Schexnider***	***Fogleman***
Wrongful Act	Foreign	Foreign	Foreign
Flag	Foreign	Foreign	Foreign
Domicile of Injured	United States	United States	United States
Allegiance of Shipowner	Foreign	Foreign	Foreign
Place of making of Contract	Foreign; Prior One In United States	United States	Obtained in United States, Signed Foreign
Place of Performance of Contract	Foreign	Foreign	Foreign
Base of Operations	Foreign	Foreign	Foreign

Considering the factors set forth by this Court,[3] these cases are identical. If anything, *Schexnider* presents a stronger case for application of American law because Beasley executed his employment contract at his designated foreign work location, whereas Schexnider signed his contract in the United States. Respondents make no attempt to distinguish *Fogleman*, and they state, paradoxically, that the corporations involved in *Schexnider* did not conduct any business in the United States. Yet, Petitioner, McDermott International, Inc., is the identical corporation involved in *Schexnider*. *Schexnider* and *Beasley* present the same corporation and the identical *Lauritzen-Rhoditis* factors. The *only* reason for a different result is the fact that the suit in *Beasley* was filed down the street at the state courthouse.[4]

Respondents cite two cases for the proposition that American law has been applied to Americans injured on foreign vessels in foreign waters. *Coats v. Penrod Drilling Corp.*, 5 F.3d 877 (5th Cir. 1993), *rehearing en banc granted*, 20 F.3d 614 (5th Cir.), *cert. denied*, 114 S. Ct. 1303 (1994); *Symonette Shipyards*,

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Two factors mentioned in *Lauritzen*, inaccessibility of a foreign forum and the law of the forum, are not included in the chart as this Court did not consider them important in determining choice of law. *Lauritzen*, 345 U.S. at 589-91.

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Respondents spend considerable effort stating that the writ should not be granted because Petitioner has not conclusively established the adequacy of Malaysian law. In the first place, this is not a factor cited by this Court in *Lauritzen-Rhoditis*, and the adequacy of the foreign forum has not been considered relevant by most of the federal circuit courts. *E.g.*, *Fogleman*, 920 F.2d at 283. To the extent that there is a conflict between the circuit courts and this Court or between the circuit courts, that conflict is another reason for this Court to grant Petitioner's writ of certiorari. However, in answer to Respondents' contention, Petitioner established *without contradiction* that Malaysian law is adequate. *See supra* note 2.

Ltd. v. Clark, 365 F.2d 464 (5th Cir. 1966). Contrary to Respondents' argument, Coats was *not* injured on a foreign vessel. In fact, Coats was injured on a United States flagged vessel owned by a United States company with its headquarters in Dallas. *Coats*, 5 F.3d at 887. Citing *Lauritzen's* analysis giving the law of the flag "cardinal importance," as well as the American allegiance of the shipowner and plaintiff, the Fifth Circuit applied American law. *Id.* (quoting *Lauritzen*, 345 U.S. at 583-84). Applying the *Coats* decision in *Beasley*, however, compels the opposite result that Malaysian law applies to the Malaysian vessel, owned by a Malaysian company, and operating on the Malaysian Continental Shelf. The other case cited by Respondents, *Symonette*, involved Americans employed by an American businessman in the United States for his enterprise in Haiti. *Symonette*, 365 F.2d at 467. Respondents do not, and cannot, cite to a case like the present, where the worker was injured on a Malaysian vessel on the Malaysian Continental Shelf, while employed by a Malaysian company, owned by Malaysians, pursuant to an employment contract providing a Malaysian remedy, which Beasley claims to have signed in Malaysia, and yet the court applied American law.

In summary, a comparison of the identical cases, *Schexnider*, *Fogleman* and *Beasley*, demonstrates that, unless the situation is corrected, the decision in future cases will no longer be based on the precedents of this Court. Instead, the result will be based on the forum for the suit. Therefore, Petitioner respectfully prays that this Court grant a writ of certiorari to resolve this conflict between the federal circuit courts and the Louisiana Supreme Court.

3. Conclusion

Respondents' brief substitutes unsubstantiated accusations for legal support. Even these accusations, however, reflect that

Malaysian law should apply in this case.[5] In order to perform localized construction operations in foreign countries, international companies such as Petitioner are required to subject themselves to local law. Therefore, they must contract with local companies which are owned and controlled by local citizens. There is nothing sinister about this, and there is no attempt to manipulate the judicial system. In fact, the United States has similar statutes which require American ownership of vessels which carry certain goods or which are engaged in coastwise trade in the United States. Surely an American company would not expect a Malaysian court to apply Malaysian law to an American company owning an American vessel, employing a worker in the United States pursuant to United States law and injuring that worker in the United States. Just as Petitioner must strictly comply with local law when it wants to do business in Malaysia, so too did Mr. Beasley subject himself to Malaysian law when he signed his employment contract on a vessel in Malaysia to work in a construction operation on the Malaysian Continental Shelf. A proper and uniform application of the *Lauritzen-Rhoditis* factors leads to no other result.

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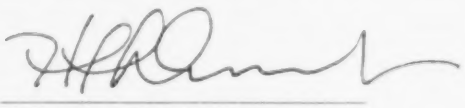
For example, Respondents devote a section of their argument to an attack on the employment contract signed by Mr. Beasley in Malaysia which was assigned to Malmac pursuant to Malaysian law. Whether Plaintiff accepts this contract or intends to rely on his former contract is not pertinent to this case. *Both* contracts provided for Mr. Beasley to work in Southeast Asia. Both contracts were assigned to Malmac when Beasley worked on the Malaysian Continental Shelf. As in *Schexnider*, 817 F.2d at 1162, what is important is the fact that the employment contract specified the employment was for Southeast Asia.

WHEREFORE, Petitioner, McDermott International, Inc., respectfully prays that this Court grant Petitioner's writ of certiorari.

Respectfully submitted,



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